



U. S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

August 20, 2002

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: JAY B. STEPHENS
ASSOCIATE ATTORNEY GENERAL

SUBJECT: Legal Representation Letters for Audited Financial Statements

This memorandum contains guidance for your General Counsel and Chief Financial Officers who prepare financial statements pursuant to the Government Management and Reform Act of 1994. Each agency and department must prepare, and have audited, financial statements in conformance with 31 U.S.C. Section 3515; Office of Management and Budget (OMB) Bulletin 01-02, Audit Requirements for Federal Financial Statements, and OMB Bulletin 01-09, Form and Content of Agency Financial Statements.

A critical element of the financial statements is the legal representation letter that addresses your agency's potential material financial liabilities from pending or threatened litigation, claims, and assessments. As in the past, OMB requires two snapshots. The interim letter reflects the status of cases and matters pending as of **July 31, 2002**, and should be submitted by **September 30, 2002**. The final letter reflects the status of cases and matters pending as of **December 31, 2002**, and should be submitted by **February 1, 2003**.

Each year, the Department of the Treasury consolidates the individual agency financial statements into an annual Financial Report of the United States Government. This report is audited by the General Accounting Office (GAO). As part of the GAO audit, the Department of Justice (DOJ) must review each agency's legal representation letters and validate the contents against DOJ case records. The Department then prepares and submits to GAO a government-wide legal representation letter that discloses legal contingencies material to the government-wide financial statement that were omitted by the agencies. The letter also notes substantive discrepancies between DOJ and agency descriptions of the legal contingencies.

As in the past, agency counsel are to use standard formats for reporting pending litigation and unasserted claims. This approach streamlines the information collected, eliciting only that information needed to satisfy the requirements of the financial statements. For your convenience, the forms and instructions, in both Word and WordPerfect formats, are available for downloading at the following website: <http://www.usdoj.gov/civil/forms/forms.htm>.

This memorandum describes the formats found on our website that are to be used in preparing the agency counsel responses and provides instructions for obtaining the formats.

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- Agency General Counsel will prepare legal representation letters, following the guidance in OMB Bulletin NO. 01-02, Appendix H-2. Current guidance is also contained in OMB's June 6, 2002 letter, subject: Legal and Management Representation Letters. Both the OMB Bulletin and letter can be found on our website.
- Each pending or threatened claim material to the financial statement of the agency will be described following the format in Attachment 1, available on our website.
- Each unasserted claim or assessment material to the financial statement of the agency will be described following the format in Attachment 2, available on our website.
- This year, OMB also requires that your interim legal representation letter update the status of cases reported in last year's letter that no longer are pending. Using the format in Attachment 3 (available on our website), provide a brief description of how each case or matter was resolved, i.e., through a judgment, settlement, withdrawal, or through some other resolution.
- A separate form should be used for each pending or threatened claim; each unasserted claim or assessment; each group of aggregated claims; or each case or matter that is no longer pending.
- Agency General Counsel should attach the standardized forms to the legal representation letter, grouping related cases and ordering the cases and matters in descending order of potential liability, i.e., the largest potential liabilities should appear first.
- The letters, along with the attachments, should be provided to GAO.
- Simultaneously, furnish an electronic copy of the legal letters to the Department of Justice at Barbara.Claterbos@usdoj.gov. You also may fax your letters to Barbara Claterbos at 202-514-1908.
- Your final legal representation letter will only contain updates to the interim letter, or a statement indicating there are no changes. Do not submit new forms for cases already discussed in the interim response unless there has been a significant change in the information.

Adherence to these steps will ease the burdens of creating and reviewing legal representation letters, while enhancing the accuracy of the process. I greatly appreciate your support in this effort. Please direct any questions you have to Ms. Stephanie Willson, Special Counsel to the Assistant Attorney General, Civil Division at 202-514-3886, fax 202-305-8071, or via e-mail to Stephanie.Willson@usdoj.gov.

Attachments

PENDING OR THREATENED LITIGATION

AGENCY/COMPONENT: _____

AGENCY'S \$\$ MATERIALITY LEVEL FOR REPORTING: _____
(This is your agency threshold for materiality)

1. **Case Name.** (include Case Citation, Case Number, and other names by which the case or group of cases is commonly known.)

2. **Nature of Matter.** (Include a description of the case or cases and amount claimed, if specified.)

3. **Progress of the Case to Date.**

4. **The Government's Response or Planned Response.** (For example, to contest the case vigorously or to seek an out-of-court settlement.)

5. **An Evaluation of the likelihood of Unfavorable Outcome.** (Choose one.)

_____ PROBABLE – (An unfavorable outcome is likely to occur.)

_____ REASONABLY POSSIBLE – (the chance of an unfavorable outcome is less than probable but more than remote.)

_____ REMOTE – (the chance of an unfavorable outcome is slight.)

6. **An Estimate of the Amount or Range of Potential Loss** (if one can be made, for losses considered to be probable or reasonably possible).

7. **The Name and Phone Number of the Agency and DOJ Attorneys Handling the Case** (and any outside legal counsel/other lawyers representing or advising the government in the matter.)

8. **The Sequence Number** (based on the total number of Pending or Threatened cases your agency/component is submitting. e.g. Number ____ of ____).
(#) (total)

**CASES REPORTED IN THE 2001 LEGAL REPRESENTATION
LETTER THAT ARE NO LONGER PENDING**

AGENCY/COMPONENT: _____

AGENCY'S \$\$ MATERIALITY LEVEL FOR REPORTING: _____
(This is your agency threshold for materiality)

1. **Case Name.** *(include Case Citation, Case Number, and other names by which the case or group of cases is commonly known)*

 2. **The Sequence Number.** *(number that was assigned for the FY 2001 legal letter)*

 3. **Resolution of the Case.** *(Provide a brief description of how the case was resolved, including date of resolution and the amount of settlement or judgment, if applicable.)*

 4. **The Name and Phone Number of the Agency and DOJ Attorneys Handling the Case** *(and any outside legal counsel/other lawyers representing or advising the government in the matter.)*
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